

Exhibit CMAE 84

08-02-'07 16:46 FROM-THOMAS & LOCICERO

8139843870

T-047 P004/006 F-031

THOMAS &
LOCICERO

Tampa Office
400 N. Ashley Dr., Suite 1100, Tampa, FL 33602
P.O. Box 2602, Tampa, FL 33601-2602
ph 813-864-3069 fax 813-884-3070 toll free 866-395-7100

South Florida Office
161 N.E. Third Ave., Suite 1500
Ft. Lauderdale, FL 33301
ph 954-332-3619 fax 677-957-2244 toll free 866-957-2009

www.tolawfirm.com

Deanna K. Shullman
Direct Dial: 561-967-2009
deanna.shullman@tolawfirm.com

August 2, 2007

VIA FACSIMILE
(941) 861-4072

Kurt Hoffman, Esq.
Sarasota County Sheriff's Office
2071 Ringling Blvd.
Sarasota, FL 34237-7040

Re: Destruction of hard drive containing 911 call from Maria Cohen

Dear Mr. Hoffman,

As you know, this firm represents the *Orlando Sentinel*, which has requested from the Sheriff's Office a first-generation copy of a 911 call made January 13, 2003 from the home of Maria Cohen to the 911 dispatch center. In its July 16, 2007 request, the *Orlando Sentinel* specifically requested that the copy be made from the hard drive containing the 911 call, and in subsequent telephone conversations with Lt. Lesaltato shortly after the request was made, Jim Stratton, the reporter for the newspaper who made the initial request, made clear that the *Orlando Sentinel* wanted a copy of the hard drive record. Lt. Lesaltato told Mr. Stratton that he had "walked over" the newspaper's request to your office on July 16 or 17th. At no time has the Sheriff's Office claimed that the record is exempt from disclosure under the Public Records Act or otherwise denied the request.

Your paralegal, Ingrid Augustine, has informed me that the Sheriff's Office destroyed the requested record on July 20, 2007 pursuant to an Order dated July 18, 2007 - two days after my client's Public Record's Act request - which, in the context of a probate dispute, provided that "[t]he Sheriff's Office may dispose of the hard drives as they see fit." The newspaper did not know the order existed until July 23, 2007 and immediately advised the Sheriff's Office directly and through counsel not to destroy the record. However, as Ms. Augustine explained in my telephone conversation with her on July 24, 2007, at that point the record had already been destroyed. In fact, the Sheriff's Office prepared the order, including the quoted language, and submitted it to the Court for entry on July 17, 2007, which was also *after* my client's Public Records Act request for the record. To my knowledge, the Court was not apprised of the pendency of the *Orlando Sentinel's* Public Records Act, though the Sheriff's Office - and your

K. Hoffman, Esq.

8/2/2007

Page 2

office specifically – was undeniably aware of the outstanding request at the time it procured the order from the Court.

As you are aware, Florida's Constitution and Public Records Act guarantee the public access to all public records not specifically exempted by law. Fla. Const. Art. I, § 24; Fla. Stat. § 119.01. For nearly thirty years, it has been settled law in this state that only the *Legislature* is empowered to create exemptions to the Public Records Act. E.g., *Wait v. Fla. Power & Light Co.*, 372 So. 2d 420, 425 (Fla. 1979) (Public Records Act "excludes any judicially created privilege of confidentiality and exempts from public disclosure only those public records that are provided by statutory law to be confidential or which are expressly exempted by general or special law"). Moreover, once a request is made for a certain record, the agency to which the request was made must retain the record for a period of thirty (30) days following the request, regardless of whether the agency claims the record is exempt from disclosure. Fla. Stat. § 119.07(1)(h). Violation of the Public Records Act, including this 30-day retention requirement, subjects the agency to civil liability and potentially to criminal liability as well. Fla. Stat. §§ 119.07, 119.10.

The Sheriff's Office's destruction of the record on July 18, 2007 was unlawful. Once the *Orlando Sentinel* made its request for the record on July 16, 2007, the Sheriff's Office was obligated by law to keep the record until at least August 15, 2007. Fla. Stat. § 119.07(1)(h). The court's order – which was procured by the Sheriff's Office and entered by the Court *after* the newspaper's request was made – is not sufficient to relieve the Sheriff's Office of its obligations under the Act. First, the Sheriff's Office procured the order with full knowledge of the *Orlando Sentinel's* request for the record, and as far as I can tell, the Sheriff's Office did not inform the Court of the pendency of the *Orlando Sentinel's* public records request when it procured the order. Second, the Order does not order destruction, it simply *allows* the Sheriff's Office to destroy the record "as it sees fit." Accordingly, the Order cannot be interpreted to condone destruction of the record in violation of the Public Records Act. Third, the Court simply is not empowered to authorize the Sheriff's Office to destroy a requested public record absent statutory authority for the destruction. For these reasons, the Court's order does not relieve the Sheriff's Office of its affirmative obligation to retain the record until August 15, 2007 in order to give the *Orlando Sentinel* sufficient opportunity to obtain the record or consider whether court intervention is appropriate to remedy the Sheriff's Office's failure to provide the requested record.

Moreover, the manner in which this Order was procured and the record destroyed raises questions concerning whether the Sheriff's Office knowingly and deliberately sought to destroy the record specifically in response to the *Orlando Sentinel's* request for it. My client's request was received by the Sheriff's Office on July 16, 2007 and was discussed in detail with the agency immediately following that request. Notwithstanding the request and discussions with the agency concerning the record, the agency thereafter sought an order from a court that would allow the Sheriff's Office to destroy the record without informing the court that the record was the subject of an outstanding request for public access under the Florida Constitution and Chapter 119, Florida Statutes. Once the Sheriff's Office obtained the order, it immediately destroyed the record without informing the *Orlando Sentinel* that the record that

03-02-'07 16:47 FROM-THOMAS & LOCICERO

8139843070

T-047 P006/036 P-00

CMIAE
84

K. Hoffman, Esq.
8/2/2007
Page 3

was the subject of its public records request had been destroyed. The newspaper only learned of its destruction when it obtained a copy of the Order three days after the Sheriff's Office destroyed the record. The facts of this case raise suspicion that the Sheriff's Office knowingly violated Section 119.07, which not only gives rise to a civil action against the agency but also constitutes a first-degree misdemeanor and subjects any public officer involved in the violation to suspension and removal or impeachment. We have copied others on this correspondence, as these are the public officials and agencies with an interest in ensuring that Floridians' right of access remains unencumbered and for enforcing the criminal penalties contained in the Public Records Act.

The *Orlando Sentinel* demands and expects that the Sheriff's Office will not commit future violations of the Public Records Act and will adhere to its constitutional, statutory, and other legal obligations in that regard going forward.

Sincerely,

THOMAS & LOCICERO PL



Deanna K. Shullman

cc: Governor Charlie Crist
Attorney General Bill McCollum
Pat Gleason (Director of Cabinet Affairs and Special Counsel for Open Government)
Commissioner Gerald M. Bailey (FDLE)
State Attorney Earl Moreland
Honorable Andrew D. Owens, Jr. (reference Case No. 2003-CP-1071-NC)